

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION**

SOUTHERN ENVIRONMENTAL LAW
CENTER and DEFENDERS OF WILDLIFE,

Plaintiffs,

v.

LEOPOLDO MIRANDA, in his official
Capacity as Director of Region Four of the
United States Fish and Wildlife Service,

JAMES KURTH, in his official capacity as
Deputy Director Exercising the Authority of the
Director of the United States Fish and Wildlife
Service,

DANIEL JORJANI, in his official capacity as
Principal Deputy Solicitor Exercising the
Authority of Solicitor, the head of the Office of
the Solicitor, an agency within the Department
of the Interior, and

DAVID BERNHARDT, in his official capacity
as Secretary of the Department of the
Interior,

Defendants.

Case No. 3:19-cv-00017

STIPULATION OF SETTLEMENT AND DISMISSAL

Plaintiffs Southern Environmental Law Center (SELC) and Defenders of Wildlife, and Defendants Leopoldo Miranda, James Kurth, Daniel Jorjani, and David Bernhardt, by and through their undersigned counsel, in the interests of avoiding further litigation, and in order to settle Plaintiffs' claims in this Freedom of Information Act (FOIA) action, hereby stipulate and agree as follows:

1. The parties do hereby agree to settle and compromise the above-captioned action under the terms and conditions set forth herein.

2. Defendants shall pay Plaintiffs a lump sum of twenty-five thousand, one-hundred eighty-two dollars and fifty cents (\$25,182.50), in full and complete satisfaction of Plaintiffs' claims for attorneys' fees and litigation costs in the above-captioned litigation. The payment shall be made by electronic transfer of funds to Plaintiffs. Following the dismissal with prejudice of the above-captioned civil action, Plaintiffs shall cooperate with Defendants to ensure that all documentation required to process the payment is complete and accurate. Payment will be made consistent with the normal processing procedures followed by Defendants and the Department of Treasury, following the dismissal of the above-captioned civil action.

3. Defendants shall complete an additional search for responsive, non-privileged agency records as follows ("Supplemental Search"):

- a. The Fish and Wildlife Service (FWS) will search Leopold Miranda's emails from January 1, 2017, through August 16, 2018, excluding calendar invitations, responses to calendar invitations, and email from any distribution list, using the following search terms: ("Wildly Important Goal" OR "WIG").
- b. FWS will search Leopold Miranda's emails from January 1, 2017, through August 16, 2018, excluding calendar invitations, responses to calendar invitations, and email from any distribution list, using the following search terms:

("annual goal" OR "yearly goal" OR quota OR quotas OR "thirty species" OR "30 species" OR guidance OR VIP OR VIPs OR HQ OR Headquarters OR "fish, wildlife, and parks" OR "fish, wildlife and parks" OR "fish wildlife and parks" OR "main interior" OR "surname package" OR "hidden workload" OR "full workload" OR budget OR budgets OR budgetary OR budgeting OR budgeted OR OMB OR "Office of Management and Budget" OR David Bernhardt" OR DLB OR "Karen Budd-Falen" OR "karen_budd-

falen@ios.doi.gov" OR "karen.budd-falen@sol.doi.gov" OR "James Cason" OR "james_cason@ios.doi.gov" OR "Margaret Everson" OR "margaret_e_everson@fws.gov" OR "Bridget Fahey" OR "bridget_fahey@fws.gov" OR "Maureen Foster" OR "maureen_foster@ios.doi.gov" OR "Gary Frazer" OR "gary_frazier@fws.gov" OR "Daniel Jorjani" OR "daniel.jorjani@sol.doi.gov" OR "Jim Kurth" OR "jim_kurth@fws.gov" OR "Jason Larrabee" OR "jason_larrabee@ios.doi.gov" OR "Katie Mills" OR "katie_mills@ios.doi.gov" OR "Don Morgan" OR "don_morgan@fws.gov" OR "Charisa Morris" OR "charisa_morris@fws.gov" OR "Kashyap Patel" OR "kashyap_patel@fws.gov" OR "Sarah Quamme" OR "sarah_quamme@fws.gov" OR "Gareth Rees" OR "gareth_rees@ios.doi.gov" OR "Tasha Robbins" OR "tasha_robbins@ios.doi.gov" OR "tasha_l_robbins@ios.doi.gov" OR "Greg Sheehan" OR "Gregory Sheehan" OR "greg_j_sheehan@fws.gov" OR "Aurelia Skipwith" OR "aurelia_skipwith@ios.doi.gov" OR "Roslyn Sellars" OR "roslyn_sellars@fws.gov" OR "Gina Shultz" OR "gina_shultz@fws.gov" OR "Todd Willens" OR "todd_willens@ios.doi.gov" OR "Ryan Zinke" OR RKZ)

AND

("inherently federal" OR threatened OR endangered OR DDL OR "listing decision" OR "de-list" OR "de-listing" OR "delist" OR delisting OR "down-list" OR "down-listing" OR downlist OR downlisting OR reclassify OR reclassification OR "status change" OR "status changes" OR "species assessment" OR "species assessments")

- c. FWS will provide Plaintiffs with an excel spreadsheet of the Supplemental Search results that identifies the subject and date/time of receipt of the resulting emails.
- d. Plaintiffs will review the excel spreadsheet and identify any types or groups of emails to omit from the Supplemental Search.
- e. FWS will produce any responsive, non-exempt agency records within three weeks of receiving Plaintiffs' response after reviewing the excel spreadsheet ("Supplemental Production"). If the volume of agency records

makes this deadline infeasible for the agency, the Parties shall negotiate a timeline for a rolling production.

4. Plaintiffs agree to forever discharge, release, and withdraw any present and future claims of access to agency records or portions of agency records sought in this action, except as it pertains to any withholdings from the Supplemental Production as discussed in Paragraph 5.

5. The Parties agree that the Court shall retain jurisdiction over any withholdings from the Supplemental Production. Defendants, however, retain the ability to argue that particular agency records found in the Supplemental Search are not within the scope of Plaintiffs' original FOIA request. Nonresponsive records would not be considered "withheld" under FOIA.

6. Except as stated in paragraph 5, this Stipulation of Settlement shall represent full and complete satisfaction of all claims arising from the allegations set forth in the Complaint filed in this action, including full and complete satisfaction of all claims for costs and attorneys' fees that have been, or could be, made in connection with the administrative FOIA process, the District Court litigation process, and any other proceedings involving the claims raised in this action.

7. This Stipulation of Settlement shall not constitute an admission of liability or fault on the part of Defendants, the United States, or their agents, servants, or employees and is entered into by all parties for the sole purpose of compromising disputed claims and avoiding the expenses and risks of further litigation.

8. This Stipulation of Settlement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

9. Except in an action to enforce its terms, the parties agree that this Stipulation of Settlement will not be used as evidence or otherwise in any pending or future civil or administrative

action against Defendants or the United States, or any agency or instrumentality of the United States.

10. Execution of this Stipulation of Settlement by counsel for Plaintiffs and by counsel for Defendants shall constitute a dismissal of these actions with prejudice, effective upon order of the Court, pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii).

Date: December 17, 2020

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